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Supreme Court, U.S.
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No. 03-1721

In The

Supreme Court of the United States

LUCRETIA G. VINTILLA,

Petitioner,

v.

CITY OF ROCKY RIVER, OHIO, R. BIRD,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY TO NEW POINTS RAISED IN BRIEF IN OPPOSITION

The Respondents have made factual statements in their brief which are incorrect, distorted or unsupported by the record. At page 3 of the brief, the respondents acknowledged that the petitioner filed a motion for summary judgment and that it was supported by the complaint, affidavits and exhibits annexed and a brief.

The evidence proffered by the petitioner in support of her motion for summary judgment established the absence of a genuine issue of material fact. Respondents failed to offer any evidentiary material to counter the petitioner's evidence as required by Rule 56 (e). This Rule states: ". . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, *must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.* (Italics supplied).

Respondents seek to confuse the issues regarding petitioner's motion for summary judgment with the respondents' motion to dismiss that was allegedly converted into a motion for summary judgment by the district court. Respondents stated at p. 7 of their brief that:" ". . . Petitioner had an opportunity to respond to Respondents' motions (presumably to the motion to dismiss and the alleged converted motion for summary judgment) by filing two answer briefs. This is contrary to Petitioner's claim that she did not respond to the alleged Motion for summary Judgment because she had no knowledge that the court would treat the Motion to Dismiss as one for summary Judgment."

The record shows that petitioner's answer briefs were directed to the motion to dismiss and not to the alleged conversion of that motion to one for summary judgment, of which the petitioner had no knowledge. Clearly, under Rule 56(E), a brief alone would be inadequate to counter a motion for summary judgment properly supported by the requisite evidentiary material.

The respondents response to petitioner's motion for summary judgment was limited to a brief which they filed in opposition to said motion and the affidavit of officer Bird (see copy attached). Officer Bird stated in the affidavit that "he actually investigated the accident." The question which arises in this connection is whether Bird conducted the requisite investigation and performed his duty in that respect as required by law.

Black's Law Dictionary, 5 ed., defines "investigation" as follows: ". . . to examine and inquire into with care and accuracy."

New World Dictionary, Second ed. states:

. . . to search into as to learn the facts, inquire into systematically.

What does the record demonstrate as to whether Bird "actually investigated the accident?" The undisputed evidence shows that Bird arrived at the scene of the accident after its occurrence and after the vehicles had been removed from the collision position. Bird talked to the parties separately, first with the opposing party and then with petitioner. The latter protested vehemently that she was not the guilty party. Nonetheless, Bird rushed to judgment and told petitioner a the scene of the accident categorically that she was at fault for the accident.

The full extent of Bird's "actual investigation" was the conflicting statements which he obtained from the parties at the scene of the accident, following which he pronounced petitioner at fault. It is noteworthy that Bird did not issue a citation at that time, although immediately thereafter he filed a sworn complaint charging petitioner with a violation of the law.

It is obvious that Bird did not and could not make an appropriate investigation of the accident "to learn the facts" and "to make a detailed examination to uncover the facts and to determine the truth" since he did not see the accident and was unable to examine the vehicles in their collision position. There was no independent witness to the accident. Thus it is readily apparent that Bird's affidavit filed with his brief in opposition to petitioner's motion for summary judgment is self-serving, conclusionary, with no probative value to counter the evidentiary material presented in support of the motion. Stated simply, it is inadequate.

Respondents argue that (pp 10, 11): "The fact that Officer Bird conducted his investigation and disagreed with Petitioner's version of the events leading up to the accident does not, without more, render his investigation, the issuance of a citation, and subsequent dismissal a violation of due process or any other Constitutional right." There are several serious flaws in the argument.

1. There could not be a true disagreement with Bird about how the accident occurred (his version) since Bird did not see the accident, did not observe the vehicles in their collision position and did not have an independent witness to the accident. Bird did not have personal knowledge of the facts and circumstances of the accident to form a valid opinion of the cause of the accident. 2. Bird did not issue a citation at the scene after he declared petitioner at fault, but instead he filed a sworn complaint falsely charging the

petitioner with a violation of the law that caused the accident and thereby provoked criminal proceedings against the petitioner which he dismissed before trial. The fact that petitioner was unlawfully subjected to a malicious prosecution action, that she was compelled to engage legal counsel, with its attendant monetary expense and loss of time, to make court appearances, prepare for trial, suffer anxiety, humiliation, curtailment of liberty, loss of property and the invasion of her privacy did not, in respondents' view and shared by the lower court, implicate federal due process violations of petitioner's rights.

Respondents insist, as held by the lower court, that petitioner did not show that her constitutional rights had been violated as a result of Bird's actions and conduct, and therefore Bird is entitled to qualified immunity from liability for his behavior.

In Anderson v. Creighton, 483 U.S. 635, the court held:

> Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the "objective legal reasonableness" of the action, assessed in light of the legal rules that were "clearly established" at the time the action was taken. Harlow v. Fitzgerald. 457 U.S. 800.

The Supreme Court in Anderson set forth an example of a clearly established rule that must not be violated, to wit: "the right to due process of law is clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that the particular action is a (violation) violates clearly established rights.

The record contains sufficient evidence submitted by the petitioner to establish the absence of a genuine issue of material fact with respect to Bird's violation of petitioner's due process rights as clearly established by the Due Process Clause. Respondents failed to offer any evidence to counter petitioner's evidentiary material, and as a consequence summary judgment is proper in favor of the petitioner.

Moore's Federal Practice, 3d Ed., 56.1 [7] [b] observed:

> . . . the Supreme Court's Liberty Lobby opinion states that summary judgment is appropriate if the evidence is "so one-sided that only its movant can prevail" Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 250 (1986)

CONCLUSION

The Court should grant this petition and directly address and decide the issues presented below on the basis of the complete record in the appeal.

Respectfully submitted,

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STATE OF OHIO)
) SS: AFFIDAVIT
COUNTY OF CUYAHOGA) RICHARD BIRD

Affiant, Richard Bird, after first having been duly sworn, deposes and states that:

)1) That he is the officer named as a defendant in the case of *Lucretia Vintilla v. City of Rocky River, et al*, United States District Court case No. 1:02CV2291;

(2) That he is a sworn officer in the Police Department of the City of Rocky River, Ohio and has served in that capacity since October, 1991. He graduated from the Ohio Peace Officer Training Academy in London, Ohio;

(3) That he is a graduate of Westlake High School and has taken courses at Cuyahoga Community College majoring in criminal justice and amassing approximately 117 credit hours;

(4) That since his initial training to become a sworn officer, he has attended a number of courses including being certificated in accident investigation which involved attendance at a one week course.

(5) That he recalls the incident set forth in the complaint and he actually investigated the accident. Affiant at that date, time and place was of the opinion that Mrs. Vintilla was absolutely the cause of the accident and he told her so. Notwithstanding Mrs. Vintilla's protestations to the contrary, Affiant believed that Mrs. Vintilla was the cause of the accident. Affiant then

took all the materials back to the station and thoroughly reviewed same. Upon his review, he exercised his discretion as a sworn officer under the laws and ordinances of the City of Rocky River, County of Cuyahoga, State of Ohio in the United States of America and issued a citation to Mrs. Vintilla.

(6) That it is his understanding that the issuing of a citation is not a finding by the Court or a conviction. That a party is entitled to dispute his decision to issue a citation and retain counsel and have the matter heard before a judge and jury. This procedure was available to this person and she disputed the citation which was her right;

(7) That at the time of the trial Mrs. Vintilla appeared with her husband appearing as counsel. That affiant had subpoenaed the other person involved in the accident. That her counsel represented that all damages to the other person involved in the accident had been paid and that the other person in the accident's vehicle had been repaired. That the other person involved in the accident verified his satisfaction as to the repair of his property damages;

(8) That the day of the said hearing/trial was a hectic one. That to his recollection the Court docket was full. The Court was crowded. Upon discussing the matter with all the parties involved he exercised his discretion to dismiss the case. The party suffering the property damage agreed since his vehicle was repaired by or on behalf of the Vintillas, affiant advised the prosecutor to dismiss the case. This the prosecutor did and the case was dismissed;

(9) That all documents he completed were documents required in the course of his duties. That many of them

are matters of public record and available to the public including insurance companies. That affiant made no contact with Mrs. Vintilla's insurance carrier and has no idea why the insurance carrier acted in the manner that it did. Affiant did nothing to cause Mrs. Vintilla's insurance premium to be increased or for the insurance company to cancel her insurance.

FURTHER AFFIANT SAYETH NAUGHT UNDER PENALTY OF LAW.

SWORN TO BEFORE ME and subscribed in my presence this _____ day of _____, 2004.

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NOTARY PUBLIC